C. F. 71 & 72—70,000—14-7-30

C.F. 71 & 72.

1933

Department of [illegible]

OFFICE [illegible]

STATION [illegible]

Misc No. 11[illegible]

1429

Dated 23-5-33

Date [illegible]

To whom sent

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DESPATCHED
23 MAY 1933

(SUBJECT.)

Suits — (S. Kanaka) — Legis. D.M.C — O.P. 10 Y5/33 —

Adams — A.L. Act — Parisian Cream Co. —

De Luca — Sanchez.

* Not to be filled in in the case of permanent records.

Ref.A3.No.1389-33. South Kanara Collector's Office,
Camp Udipi, dated 6th May 1933.

From

E. M. Gawne, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Suits - (South Kanara) - Udipi - Dt.Munsif's court - O.S.No. 75/33 - Loans - Agriculturists' Loans Act - Priority of mortgage over Government loan - defence - sanction applied for.

I enclose a copy of the plaint in the above suit which is for a decree in favour of the plaintiff by the sale of the plaint property for the realisation of the amount of mortgage with interest thereon due to the plaintiff from the 1st defendant free from the mortgage in favour of the 2nd defendant (Government) for a loan obtained by the 1st defendant.

2. The loan in question viz. Rs. 400/- was granted by the Special Tahsildar in charge of Loans work on 17-2-1924 to the 1st defendant for the purpose of enabling him to re-build a house destroyed by the floods, in S.No. 98/5 of Pandeshwar village on the security of the plaint property, viz., S.No. 23/2C of Haradi village. At the time of the issue of this loan it was within the knowledge of the Special Tahsildar that the question had previous encumbrance to an extent of 300/- bearing interest at 5%. It is now found that this previous encumbrance was for Rs. 350/- and not for Rs. 300/-. This mortgage was of a date (5-9-1910) prior to the date of the Government loan. Subsequent to the date of the grant of the Government loan, the 1st defendant executed on 5-3-1925 a fresh

mortgage deed for Rs. 450/- in favour of the original mortgagee Mahabala alias Subraya Varamballi, deceased husband of the plaintiff. As the Government loan was granted under the ---- Agriculturists' Loans Act and as the amount of the subsequent mortgage dated 5-3-25 represented only the amount of original mortgage dated 5-9-1910 with arrears of interest, the Vakil at Udipi is of opinion that the plaintiff is entitled to claim priority over Government loan to the full extent of her mortgage. The Government Pleader, Mangalore, agrees with the Vakil in this respect as the plaint mortgage was executed in renewal of an earlier mortgage prior to the Government loan. The Government Pleader says that Government can claim a decree for the amounts due to Government in form 9 of Appendix D of the Civil Procedure Code. In the circumstances, the Government have simply to acquiesce in the plaintiff's right and to claim a decree in their favour for the payment of the amounts due to them out of the surplus sale proceeds of the property. I enclose a draft written statement prepared in this light and request that the Board may be pleased to sanction the defence of the suit and to approve the draft written statement.

3. I received summons in this suit, together with a copy of the plaint dated 28-2-33 on 11-3-1933. The suit stands posted to 19-6-33. I enclose the loan records of L.O. 45/1333 of the Udipi Taluk and my office file D.Dis. 8003-32 dated 26-10-32 containing the papers connected with the plaintiff's suit notice in the matter for reference and return. (T) (S)

Your obedient servant,

J Mallikarjunaiya
9-5-33

For Collector.

In the Court of the District Munsif of Udipi.

O.S. No. 75/1933.

Between:

Sridevi Amma ... Plaintiff.

and

Manuel Silva and another ... Defendants.

Written statement of the Secretary of State for India in Council represented by the Collector of South Kanara, 2nd defendant, under Order VIII, Rule 1 of the Civil Procedure Code.

The 2nd defendant above named begs to state as follows:

1. The address of the 2nd defendant is as stated in the

2. This defendant has no objection to the claim of the plaintiff as advanced in the plaint being allowed. He, however, submits that the plaint property was mortgaged by the 1st defendant to this defendant on 17-2-1924 for Rs. 400/-, which was advanced by this defendant to the 1st defendant for the purpose of enabling the latter to rebuild a house destroyed by the floods in S.No. 98/5 of Pandeshwar village under the Agriculturists' Loans Act and was repayable in ten annual instalments - the 1st of Rs. 51-9-6 and the next nine at Rs. 49-5-1 each.

3. Out of the ten instalments payable by the 1st defendant to this defendant under the terms of the mortgage or security bond dated 17.2.1924, the first nine have already been realised by this defendant from the 1st defendant and the last one is outstanding. The amount still due to this defendant under principal is Rs. 47-6-5, on which interest runs at 4 per cent per annum from 10.4.1933 till date of payment.

According to Jahir's letter of 11-10-32 at p. 3 of (S) this instalments of Rs. 49-5-1 appear to be due. Presumably one instalment has twice been collected

4. This defendant denies the truth of the other allegations in the plaint not expressly traversed herein in so far as they are against this defendant

5. This defendant therefore prays that in the event of a

decree being passed in the above suit, a decree may also be passed in favour of this defendant, providing for the payment of the amounts due to him out of the surplus sale proceeds according to the provisions of law.

South Kanara Collector's Office, J Mallikarjunaiah
Camp Udipi, 6th May 1933. For Collector.

In the Court of the District Munsiff of Udipi.

O.S.No.75/1933.

Between:-

Srideviamma — Plaintiff.

and

1. Manuel Silva
2. Secretary of State for India in Council by Collector of South Kanara. — Defendants.

Plaint under Section 26 Order VII Rule 1 of the C.P.C.

The Plaintiff abovenamed begs to state as follows:-

I. That Plaintiff Srideviamma is the widow of Mahabala alias Subraya Varamballi, residing in Varamballi village, Udipi Taluk — Plaintiff.

N.B. The above is Plaintiff's address for service.

II. That the 1st Defendant Manuel Silva is the son of Sukdi alias Anthony Silva, Roman Catholic, residing in Soorkudru of Pandeshwar village, Udipi Taluk, while the 2nd Defendant the Secretary of State ~~of~~ for India in Council is sued on behalf of the Government and is represented by the Collector of South Kanara, Mangalore. — Defendants.

III. Subject matter of the suit.

1. The Plaintiff is mortgagee of lands belonging to the 1st Defendant.

2. The following are particulars of the mortgage:-

(a) The mortgage is dated 5.3.1925.

(b) The mortgage was executed by the 1st Defendant, in favour of Plaintiff's husband, the late Mahabala alias Subraya Varamballi.

(c) The sum secured is Rs.450-0-0 and interest.

(d) The rate of interest is at 6% on the principal and at 10% on the arrears of interest.

(e) The property subject to the mortgage is described herebelow in schedule B.

(f) The sum now due is Rs.586-0-0 being principal and interest accruing from 5.3.1928 and interest on interest.

(g) The late Mahabala alias Subraya Varamballi has died without leaving any male issue but only his widow the Plaintiff who is now solely entitled to sue under law.

3. The plaint mortgage is in renewal of an earlier mortgage dated 5-9-1910 executed by the 1st defendant in favour of Plaintiff's husband. The 2nd Defendant appears to have taken a mortgage of the plaint lands between the dated of the two mortgages. Though 2nd Defendant's mortgage is prior to the plaint mortgage it is subsequent to the 1st mortgage in renewal of which the 2nd mortgage was taken. The 1st mortgage is therefore kept alive for Plaintiff's benefit under law and it was the intention of the parties to so keep it alive. The Plaintiff is therefore entitled to priority over the mortgage in 2nd defendant's favour and is entitled to recover the suit amount by sale of the plaint properties free from the objections of the 2nd Defendant.

4. The cause of action for this suit arose on 5-3-1927 and subsequently for interest in Haradi village where the plaint properties are situated within the jurisdiction of this court.

5. The Plaintiff has sent a notice under Section 80 of the C.P.C. setting forth the above contentions to the Collector of South Kanara but has obtained no reply or compliance.

6. The Plaintiff values this suit at Rs.586-0-0 both for court fees and jurisdiction.

7. The Plaintiff claims:-

(1) Payment or in default sale of the plaint properties for recovery of the following sums, costs of suit. and interest on the aggregate at 10% per annum free from the mortgage in 2nd Defendant's favour and free also from his objections.

(2) In case the proceeds of sale are insufficient to pay the amount due to Plaintiff then that liberty may be allowed to Plaintiff to apply for a personal decree for the balance.

Particulars of the claim:-

1. Principal amount	Rs.	450- 0- 0
2. Interest due on 5-3-1929		22- 8- 0
3. Interest on the above at 10%		9- 0- 0
4. Interest due on 5-3-1930		22- 8- 0
5. Interest on the above at 10%		6-12- 0
6. Interest due on 5-3-1931		22- 8- 0
7. Interest on the above at 10%		4- 8- 0
8. Interest due on 5-3-1932		22- 8- 0
9. Interest on the above at 10%		2- 4- 0
10. Interest due from 6-3-32 up to date		22- 0- 0
11. Cost of registered notice		1- 8- 0
Total	Rs.	586- 0- 0

Description of the Plaint properties:- Schedule B

ಪ. ಕ. ೦. ಡಿ. ಬ್ರಾಹ್ಮಣರ ಸ. ಹಿ. ನೆ ಕೇಂದ ಉಪ್ಪಿನಂಗಡಿ ಸಂ: ೬೦ನೇ ಹಾರಾಡಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ ೨೫/೨೮ ನೇ ಸಬ್ ಡಿವಿಜನ ಭಾಗ ಪೈಕಿನ ೬೨ ಸೆಂಟ್ಸು ೬ಜರ ತೀರ್ವೆಗೆ ರೂ ಇಪ್ಪತ್ತು ೨೦-೦-೦ ಚೀರೀಜಿನ ತೋಟ ಸ್ಥಳಗಳು ಕಚ್ಚಿಪ್ಪರಿಗಾ ಬಾವಿ ವಗೈರೆ ಸಮಾಗಿದಿ ಪೂರ್ತಿ ಮುತಿ ಕಟ್ಟಿನದು. ಗಡಿ - ಮೂಡು ಸೀಮ್ಯಾಜಿ ಯವರ ಗದ್ದೆ ತೆಂಕು ಪ್ರತಿವಾದಿ ಅಕ್ಕಳ ಚ್ರೀಲ್ ಶಿಲುವನ ಪೂರ್ತಿ ತೋಟ. ಪಡು ಪ್ರತಿವಾದಿ ಅಕ್ಕಳ ಕ್ಲೈಮಿಂತ್ ನ ಪೂರ್ತಿ ತೋಟ. ಬಡಗು ಹೆಬ್ಬಲಿ. ಈ ಮಧ್ಯ ಹೇಳ್ಕಾಣ್ಸಿನ ವಿನವದ ಅಸ್ತಿಯು ಆಗುತ್ತದೆ.

Translation.

Garden S.No. 28/2 C of M. 60 Haraadi village, Bantwal Taluk, of Brahmavar Sub District in South Kanara Registration District, containing 62 cents assessed at Rs 5-0-0, with trees, buildings, wells, etc bounded on the east by Somayaji's field, on the south by garden belonging to the Share of Gabriel Silva, brother of Deft., on the west garden also belonging to the Share of Clement Silva, brother of the Deft., on the north by rivers.

I, the Plaintiff abovenamed do hereby declare that the facts stated above are all true to the best of my knowledge.

Dated 28-2-33. Camp: Udipi.

ಪಾಕ್ಷಿ.

1. ೫. ೨. ೧೯೨೫. ಮಹಾಬಲ ಯುನೆ ಸುಬ್ರಾಯ ಪಾಕಂಬಳ್ಳಿಯವರಿಗೆ ಪ್ರತಿವಾದಿಯು ರಿಜಿಸ್ಟ್ರಿ ನಿಶಾಂ ಬರ್ಸಿಕೊಟ್ಟು ಕೊಡು.
2. 5. 9. 1910. ಪಿ. ಪಿ. ಪಿ.
3. 27. ೪. ೧೯೩೨. ಇನ್ನೇ ಪ್ರತಿವಾದಿಂಗೆ ಕೊಟ್ಟು ರಿಜಿಸ್ಟ್ರಿ ಮೋಚೀಕ್ಕು.
4. - ಪಿ - ನಕಲು.

8

5. 31. 8. 1932. ಎಕ್ಸ್‌ಪರ್ಟ್ ಹೇಳಿಕೆ.
ಪ್ಲೆ ೩ನೇ ದಸ್ತಾವೇಜು ೨ನೇ ಪ್ರತಿವಾದಿಯಿಂದ ಹಾಜರುಪಡಿಸಿಕೊಳ್ಳಲಾಗಿದೆ.

(Sd.) x x x

Vakil for Plaintiff.

(True Copy)

For Collector.

KM
9-5-33

9 Date of hearing 19. 6. 33 b. 2 Cj form 3.

Subject.

R. F. XXIV—A 10—28 004—15-3-32 (6)

FOR MEMBER.

M3

Suit - (S. Kamara) - mupi D.H.C -
C.S. No. 75/33 - Loans - A.L. Act -
~~Private encumbrance Govt. loan~~ - Defence -
Sanct

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, 193

READ ALSO :—

Register No. _____ From the E. 1582/32 No. _____ dated _____ 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193 .

RESOLUTION. M/s No. 1429 dated 22. 5. 1933.

The Board sanctions the defence of the suit and approves the draft written statt subs by the Colly.

Colly. M. S. Kamara
The records.
Attached to file